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April 29, 2003

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MEMORANDUM

TO: Chairman, Ranking Member, and Members of the
Senate Committee on Armed Services

Chairman, Ranking Member, and Members of the
Senate Committee on Environment and Public Works

Chairman, Ranking Member, and Members of the
House Committee on Armed Services

Chairman, Ranking Member, and Members of the
House Committee on Energy and Commerce

FROM: Lynne Ross, Executive Director *LR*

SUBJECT: DOD Amendment to the Resource Conservation and Recovery Act, the
Comprehensive Environmental Response, Compensation and Liability
Act, and the Clean Air Act.

The Department of Defense has proposed amendments to the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, and the Clean Air Act. In March of this year, the National Association of Attorneys General adopted a resolution opposing these proposed amendments titled *Supporting The Principle That Federal Facilities Be Subject To The Same Environmental Standards As Private Industry and Opposing Amendments To Weaken State and EPA Authority Over the Department Of Defense*. As the Congress may soon consider such amendments, I am forwarding this resolution to you for your consideration. If the Congress does choose to consider these proposed amendments, the Attorneys General urge that the regular order be followed and that the committees of jurisdiction solicit the views of the affected states.

Thank you for your consideration of our views.

cc: The Honorable J. Dennis Hastert, Speaker, United States House of Representatives
The Honorable Bill Frist, Majority Leader, United States Senate
The Honorable Nancy Pelosi, Minority Leader, U.S. House of Representatives
The Honorable Thomas A. Daschle, Minority Leader, United States Senate



National Association
of Attorneys General

Adopted

**Spring Meeting
March 17 - 20, 2003
Washington, DC**

RESOLUTION

**SUPPORTING THE PRINCIPLE THAT FEDERAL FACILITIES BE SUBJECT TO
THE SAME ENVIRONMENTAL STANDARDS AS PRIVATE INDUSTRY AND
OPPOSING AMENDMENTS TO WEAKEN STATE AND EPA AUTHORITY OVER
THE DEPARTMENT OF DEFENSE**

WHEREAS, our nation has long made the protection of human health and the environment a priority through enactment of several environmental laws, including the Resource Conservation and Recovery Act, the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, and the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund); and

WHEREAS, Congress recognized in each of these laws that the states have a fundamental right to protect their citizens and the environment within their borders and therefore included in each law a waiver of the federal government's sovereign immunity; and

WHEREAS, the Attorneys General play a primary role in protecting human health and the environment through their enforcement of state laws authorized under the Resource Conservation and Recovery Act, the Clean Air Act, the Clean Water Act, and the Safe Drinking Water Act, and through representation of their states in cases brought under Superfund, and

WHEREAS, despite Congress' long-standing adherence to the principle that federal agencies should be subject to the same environmental standards and enforcement as private industry, the states have experienced significant difficulty in bringing federal agencies into compliance with federal and state environmental laws because federal agencies continue to dispute the extent of waivers of immunity in the environmental laws; and

WHEREAS, federal agencies have long been recognized as the nation's largest polluters with thousands of contaminated sites across the nation, which will cost hundreds of billions of dollars to remediate; and

WHEREAS, consideration and adoption of proposed legislation through regular order, with full and open hearings before the Congressional committees of jurisdiction, is one of the fundamental procedural safeguards of the legislative process, because it allows an opportunity for interested parties to present their views, allows for construction of a record upon which the need for legislation can be judged, and allows for debate on the merits of any proposed legislative language; and

WHEREAS, the Department of Defense has proposed legislation amending RCRA, CERCLA and the Clean Air Act that would provide broad exemptions from these laws, notwithstanding the lack of any demonstration that any of these laws has adversely impacted military readiness, and notwithstanding the existence of waiver mechanisms in each of these laws; and

WHEREAS, these proposed amendments to RCRA and CERCLA would preempt state and EPA authority over munitions-related and explosives-related wastes at a broad range of sites, including Department of Energy facilities, defense contractor sites, current military bases, and up to 16 million acres of former ranges that may be contaminated with unexploded ordnance; and

NOW, THEREFORE, BE IT RESOLVED THAT THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL:

1. Urges the Congress to consider legislation affecting federal agency compliance with environmental requirements only through regular order, and to solicit and consider the views of affected states in considering any such legislation;
2. Urges Congress to strengthen and clarify existing waivers of immunity in Superfund and the Clean Water Act, and in the other environmental laws, as appropriate, and to reject any proposed amendments that would impair states' authority to protect the health of their citizens, such as DOD's proposed amendments to RCRA, CERCLA and the Clean Air Act;
3. Re-establishes the Federal Facilities Working Group, composed of representatives of the offices of interested Attorneys General, under the auspices of the NAAG Environment Committee to serve as a resource to the Attorneys General/ NAAG regarding federal agency compliance with state and federal environmental laws; to monitor proposed legislation and regulatory actions in this area; and to assist the Attorneys General in formulating such responses to such proposed legislation and regulatory actions as may be timely and appropriate; and
4. Authorizes the Executive Director to transmit this resolution to Congress, the Administration, and other interested organizations and individuals; and to monitor and report back on proposed legislation that might impair state authority over federal facilities.

Dissent. *Attorneys General Bill Pryor (AL), and Gregg Renkes (AK)*

Abstain: *Attorneys General Paul G. Summers (TN) and Steve Carter (IN)*